

NOTICE OF PROPOSED REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation**

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation(CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000, 3040, 3041, 3043, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3, 3075 and to adopt Section 3040.2 in the California Code of Regulations (CCR), Title 15 concerning bridging education, credit earning, inmate work/training incentive groups, excused time off, and timekeeping and reporting.

PUBLIC HEARING:

Date and Time: **November 7, 2005, 9:00 am - 12:00 pm**
Place: Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **November 7, 2005 at 5:00 pm.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)358-2636; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 358-1655**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**Randy Marshall
Regulation and Policy Management Branch
Telephone (916) 358-1655**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Fred Lembach
Division of Adult Institutions
Telephone (916) 323-0138**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency:
Savings of approximately \$33.4 million in State Fiscal Year 04/05, and savings of approximately \$59.6 million in State Fiscal Year 05/06.
- Other non-discretionary cost or savings imposed on local agencies: None
- Cost or savings in federal funding to the state: None

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

On May 10, 2005, Legislation (Senate Bill 737) was signed into law and became effective on July 1, 2005. On this effective date, the Youth and Adult Correctional Agency, which consisted of the California Department of Corrections (CDC), the California Youth Authority (CYA), the Board of Prison Terms, the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority was abolished, and reorganized into the California Department of Corrections and Rehabilitation.

Government Code (GC) Section 12838(a) creates the Department of Corrections and Rehabilitation (CDCR), headed by a secretary.

GC Section 12838.5 vests to the CDCR, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished entities: CYA, CDC, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and

Training, Board of Corrections, and State Commission on Juvenile Justice, Crime and Delinquency Prevention. The abolished entities are known as "predecessor entities."

GC Section 12838.8 authorizes that all regulations adopted by the predecessor entities, continuing entities, and any of their predecessors are expressly continued in force, and any statute, law, rule, or regulation now in force or that may hereafter be enacted or adopted with reference to the predecessor entities and any of their predecessors shall mean the CDCR.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code refers to the CDCR, Division of Adult Operations.

Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections was abolished.

PC Section 5054 provides that the supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that all powers and duties granted to and imposed upon the Department of Corrections shall be exercised by the Director of Corrections, except where such powers and duties are expressly vested by law in the Board of Prison Terms. Commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR, except where those powers and duties are expressly vested by law in the new Board of Parole Hearings.

PC Section 5058 authorizes the Director of CDC to prescribe and amend regulations for the administration of prisons.

This action will incorporate into the CCR, Title 15, amended provisions concerning bridging education, inmate credit earning, inmate work/training incentive groups, excused time off, "S" time, and timekeeping and reporting.

The Fiscal Year 2003/2004 Budget Act directed the former CDC to provide education programming for day-for-day credit eligible inmates, pursuant to PC Section 2933, in Reception Centers (RC) and to expand the existing education programs within the General Population (GP) institutions. As a result, the former CDC incorporated new modifications and programs in the GP institutions, effective November 1, 2003, and also in the RCs, effective February 15, 2004. Included in these programs are education assessment, anger management, cognitive based re-entry orientation, life skills, and integration into the Arts in Corrections programs. In addition, the 2003/2004 Budget Act also mandated the priority hiring of day-for-day credit eligible inmates within the GP institutions.

These proposed regulations are necessary in order to establish regulations specifically related to the Bridging Education Program

(BEP), and to update language concerning inmate credit earning, inmate work/training incentive groups, "S" time, and excused time off. Also, due to the elimination of the CDC Form 191, Inmate Timecard, language concerning timekeeping and reporting has been revised.

The amended regulations will:

- Clarify the definition of program failure, specifically addressing the language concerning the 180 day period in which an inmate may be considered a program failure.
- Establish the BEP in each institution and reception center for inmates who are day-for-day credit eligible pursuant to Penal Code Section 2933.
- Provide the criteria for inmate participation in the BEP and clarify how that participation will be evaluated.
- Establish that the reception center Inmate Assignment Officer shall have the authority to initiate a classification action to assign inmates to a reception center BEP and affect a work/training group change.
- Establish the BEP as a full-time credit earning special assignment.
- Establish a new starting date when general population inmates, and segregation inmates who are in Work Group A-1 or B, can be placed in a different work group because of a short-term medical/psychiatric inpatient hospitalization that will require a longer period of inpatient care (more than 29 calendar days).
- Establish a new starting date for a work group change for inmates who are long-term medical/psychiatric unassigned status, and their health condition necessitates that they become medically unassigned for 30 calendar days or more.
- Provide the process that is used to determine the program assignment and work group status for an inmate who has a determinable physical or mental impairment which limits his/her ability to participate in a work, academic, vocational, or other such program.
- Amend regulatory language concerning timekeeping and reporting by deleting any specific reference to the eliminated CDC Form 191, the CDC Form 1697, a "time" card, a "form", or any other document that is used to record the daily attendance of an inmate assigned to a credit qualifying assignment. This deleted language will be replaced with, for easier reference and consistency, a "timekeeping log".
- Provide that an authorized "timekeeping log" shall be used to record the daily attendance of each inmate assigned to a credit qualifying assignment, and that the log shall be the reference for resolving inmate complaints or appeals and shall be retained at a secure location for a period of 4 years from the date of completion.

- Clarify language concerning the eligibility of worktime credit earning for inmates who agree to serve their term in another state or federal institution, or who are serving a concurrent term in another jurisdiction. In addition, provide specific reference to the authority that enables the Department to transfer and exchange prisoners with other states.
- Update language concerning the credit earning status of inmates who refuse a full-time qualifying assignment or are placed on non-credit earning by a classification committee. In addition, because inmates will continue to earn worktime credits that is commensurate with their assigned work group, even for absent days or an unauthorized absence, language concerning denied worktime credit for inmates who are not authorized to be absent from their assignment will be deleted.
- Update language concerning excused time off (ETO). Because inmates no longer earn and accrue ETO, but instead may use ETO that is authorized, all references to earned, accrued, accumulated, credited, or forfeited ETO has either been deleted, or amended to reflect that an inmate may use ETO that is authorized.
- Clarify the credit earning status of an inmate who has been transferred to another institution for non-adverse reasons. Amended language will specify that an inmate in a vocational/training program at the sending institution shall be assigned the same or similar program, if eligible, at the receiving institution unless the program has no vacancy or is unavailable. If the program is full or unavailable, the inmate shall be placed on any existing waiting list based on credit earning status, release date, and the length of time they have spent on the institution's waiting list. Inmates who are day-for-day credit eligible per PC 2933 shall be given priority for assignment.
- Specify which inmates on the institution's waiting list will have first, second, third, and fourth priority for placement.
- Establish that inmates being processed in reception centers, not on layover status, who are eligible to earn day-for-day credit, are eligible to be assigned to a full-time BEP. In addition, clarify that inmates being processed in reception centers, who are ineligible to earn day-for-day credits, can be assigned to half-time work/training programs.
- Clarify that sentence reducing "S" time is no longer credited but instead shall be noted on timekeeping documents for an authorized absence, and that the inmate shall receive sentence reducing credit commensurate with their designated work group. In addition, inmates who are removed from their work/training assignment for authorized reasons, shall retain their existing work/training group status unless otherwise impacted by a classification committee or disciplinary action.

- Clarify that each inmate will be advised that failure to comply with departmental grooming standards may result in the issuance of an administrative rule violation report and that a repeated pattern of administrative violations, may result in the inmate being deemed a program failure pursuant to Section 3000.